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FILED *MLB*

FEB 05 2010

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

ECF - Exempt

Attorney for Creditors and Plaintiffs
WILTON MARSHALL, JR.
and WILLIE MAE MARSHALL

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

In re:

BETTE CARR-WALTON, JAMES WALTON,
WALTON & WALTON REAL ESTATE
COMPANY

Debtors

WILTON MARSHALL, JR. and WILLIE MAE
MARSHALL

Plaintiffs,

vs.

BETTE CARR-WALTON, JAMES WALTON,
WALTON & WALTON REAL ESTATE
COMPANY, and DOES 1 to 10, inclusive

Debtors/Defendants

CASE NO.: 08-32217

Chapter 7

Adversary No.: 09-3068

**PRE-TRIAL CONFERENCE
STATEMENT**

Date: February 12, 2010

Time: 11:00 a.m.

Ctrm: Hon. Thomas E. Carlson
235 Pine Street, 23rd Floor
San Francisco, CA

PRELIMINARY STATEMENT

Plaintiffs Wilton and Willie Mae Marshall, despite their best efforts, were unable to obtain the cooperation necessary from debtors/defendants to file a Joint Pre-Trial Conference Statement and, therefore, are compelled to file their own separate statement.

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1 were convinced it was in her best interest to do so even if that seemed contrary to her wishes.
2 Darrell, while nominally listed as the agent in the transaction, had zero experience in real estate
3 or obtaining financing and essentially did nothing in this transaction. He trusted the Waltons to
4 treat his parents fairly.

5 According to Wilton Marshall, on numerous occasions, Betty Carr-Walton told him that
6 he had to do something because Helen Liu was pressing his daughter for payment, Karen
7 couldn't make the mortgage payments, and unless he stepped in to help her, Karen would lose
8 the property. Although the Marshalls ultimately ended up actually purchasing the property, they
9 were somewhat confused as to the precise nature of the transaction in which they were entering.
10 If there had been a true necessity for Mr. and Mrs. Marshall to help out, there were other
11 alternatives available such as taking over the mortgage payment, taking out an equity line or re-
12 financing sufficiently to pay Ms. Liu off. None of those options were presented to or discussed
13 with the Marshalls. None of those options would have generated \$25,000 in combined
14 commissions and mortgage broker fees, as this transaction did. Again, the Marshalls contend
15 that the only reasons they participated in this transaction was because Betty Carr-Walton lied to
16 them and convinced them they needed to save their daughter. For better or worse, the Marshalls
17 chose to believe Betty regardless of their daughter's explanations.

18 The Marshalls purchased the property in June 2007 for \$550,000. The purchase was
19 financed by a first mortgage in excess of \$400,00 with an effective interest rate of 8% and a line
20 of credit in the amount of \$82,000 at 10%. Helen Liu got paid off. The Waltons received
21 \$25,000 in real estate commissions and mortgage broker fees. There will be evidence that,
22 during this time period, Betty Carr-Walton conducted meetings in which she instructed sales
23 staff how to "encourage" their clients to agree to loans that were not necessarily favorable to
24 them but would result in a higher commission to Walton Real Estate.

25 The Waltons have a very different version of events. According to them, Darrell
26 handled all aspects of the transaction, including arranging financing, and Betty merely
27 supervised. Betty Carr-Walton contends that she had only one conversation with Mr. Marshall.
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1 It occurred after the purchase/sale contract was entered into. It was initiated by Mr. Marshall
2 and consisted of him telling her he had received various financing scenarios presented to him by
3 Darrell and liked the loan package ultimately used to finance the sale.

4 When Darrell discovered the details of the transaction, in particular the loans Betty put
5 his parents in, both he and Karen were incensed. Darrell confronted his friend James who
6 admitted that there had been wrongdoing. James told Darrell he would make things right. He
7 wrote to Wilton Marshall and agreed in writing that he would pay the pre-payment penalty on
8 their loan if Mr. Marshall sold the property.

9 Mr. Walton says that this account is untrue. He says his offer to pay the pre-payment
10 penalty was not made as an acknowledgment of wrongdoing but, rather, was his way of
11 promoting business.

12 The evidence at trial will show that the property is worth at least \$150,000 less than the
13 purchase price and that the Marshalls have on-going damages represented by the costs incurred
14 to service the mortgage and pay taxes and insurance.

15 **2. Undisputed Facts**

16 The following facts are undisputed:

- 17 1. Walton Real Estate listed the subject property beginning in September 2006
18 pursuant to a written listing agreement.
- 19 2. The property did not sell.
- 20 3. In or about March 2007, the Waltons employed Darrell Marshall as a real estate
21 agent.
- 22 4. Darrell Marshall had never been an agent in a real estate transaction and had
23 never arranged for financing.
- 24 5. The Waltons represented both the seller and the buyer in connection with the
25 subject transaction.
- 26 6. At the time of the transaction, the Marshalls had their own home, had no
27 intention of moving and were not looking for a house in San Leandro as an investment
28

1 property..

2 7. The loans secured by the property prior to the sale to the Marshalls were just over
3 \$400,000.

4 8. Helen Liu was owed \$100,000; she had a second Deed of Trust on the property
5 but was not pressing Karen Marshall for re-payment of her loan.

6 9. There is no evidence that Karen Marshall was having any problem making her
7 mortgage payments.

8 10. The Waltons received a real estate commission of over \$13,000 from the sale to
9 the Marshalls.

10 11. The Waltons received a mortgage broker commission of over \$9,000 from the
11 sale to the Marshalls.

12 12. Subsequent to the transaction, James Walton agreed in writing to pay the pre-
13 payment penalties should the Marshalls wish to sell the residence.

14 13. The Marshalls have continued to make payments on the property since they
15 bought it and have made other and further necessary payments on the property for property taxes
16 and insurance.

17 14. The property is worth approximately \$150,000 less than the price paid by the
18 Marshalls.

19 **3. Disputed Facts**

20 The critical, material factual disputes in this case are the following:

21 1. The Marshall contend that Darrell played only a nominal role in the transaction
22 and that Betty Carr-Walton handled both the sale and financing. The Waltons contend this is
23 untrue and that Darrell handled the entire matter, including financing.

24 2. The Marshalls contend that the only reason they bought the property was because
25 Betty Carr-Walton told them that unless they did so, Karen would lose the property. Betty Carr-
26 Walton denies that she said any such thing. She says she had only one conversation with Mr.
27 Marshall after the sales contract was entered into when he called to tell her he liked their loan.
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4. Disputed Legal Issues

There do not appear to be any disputed legal issues at this time.

5. Witnesses to Be Called

The parties anticipate that the following witnesses will testify in this action:

- 1. Wilton Marshall
- 2. Willie Mae Marshall
- 3. Darrell Marshall
- 4. Karen Marshall
- 5. Helen Liu
- 6. James Walton
- 7. Betty Carr-Walton
- 8. Francisco Moreno

6. Estimated Time of Trial

The parties estimate that the trial of this matter will take two (2) court days.

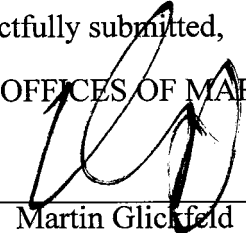
7. Other Matters

There may be insurance coverage that would apply to claims made against the Waltons. Counsel for the Waltons has represented that coverage has been denied without further details. Despite repeated requests for more information, none has been provided. As the Court may recall, there is a pending state court action which has been stayed. It may be appropriate, should the Court deem it so, to continue the trial of this matter for a brief period of time to allow investigation of the insurance issues to determine whether this action should be stayed while the Marshalls pursue their state court action against the insurance proceeds only, or to make other appropriate orders on this issue.

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Dated: Feb. 5, 2010

Respectfully submitted,
LAW OFFICES OF MARTIN GLICKFELD
By: 
Martin Glickfeld
Attorney for Creditors and Plaintiffs
WILTON MARSHALL, JR. and WILLIE
MAE MARSHALL

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I am now and at all times mentioned herein have been a citizen of the United States, over the age of eighteen years, and am not a party to the within action. My business address is 2133 Lombard Street, San Francisco, California 94123.


PRE-TRIAL CONFERENCE STATEMENT

Baron J. Drexel
Law Offices of Baron J. Drexel
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X **By US Mail:** I placed a true and correct copy of said document in a sealed envelope with postage thereon fully prepaid, deposited for collection and mailing pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business.

By **Email**: I caused such document to be emailed to the addressee and address shown above, wherein such email is transmitted that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Susan Abbott